

Appl. No. 10/577,993
Amdt. dated August 11, 2008
Reply to the Final Rejection of May 9, 2008

REMARKS

Claims 9, 10, 13-14, 17-18, 20, 22-23, 25 and 27-30 remain in this application.

The examiner rejected all of the claims under 35 USC 103 as unpatentable over Ribani et al in view of Yamamoto et al.

In his statement of the rejection, at lines 4-7 on page 3 of the action, the examiner set forth his interpretation of how the doors 106 of Ribani et al also form the partition of the two guideways. Thus, as expressed by the examiner's interpretation, these "partitions" separate the guideways of a single door 106. By the examiner's interpretation then, the guideways are located on alternate sides of the same door 106.

But under this interpretation, Ribani et al cannot be considered to teach the structure which claim 9 recites, that the partitions separate guideways of adjacent guide flaps, see claim 9 at line 10. The partitions as recited in line 10 of claim 9 do not separate guideways of the same flap, they separate the guideways of adjacent flaps.

Thus the structure of Ribani et al cannot meet the limitations recited in claim 9. The partitions of Ribani et al separate the guideways of a single door 106. They cannot also separate the guideways of adjacent doors 106. Thus, the structure of Ribani et al as expressed by the examiner cannot meet these limitations of claim 9. And his reference to Yamamoto et al does not include any teachings which can possibly be said to supply these deficiencies of Ribani et al. Yamamoto et al does not have any teaching of flaps, partitions or guideways which could in any way be considered to supply these deficiencies of Ribani et al. **Neither reference has partitions which separate the guideways of adjacent flaps from one another.**

The Ribani et al reference shows only one guide flap 106. Ribani et al does not teach, or in any way make obvious, plural guide flaps as required by claim 9, even when considered with Yamamoto et al.

And still further, Ribani et al does not teach that each guide flap should cooperate with two rows of capsule receptacles as recited in claim 9.

And the examiner's interpretation of the Ribani et al reference, and/or the combination of Ribani et al and Yamamoto et al goes even further afield from meeting the limitations of the claims when the limitations of claims 29 and 30 are considered. By the examiner's own interpretation, wherein the partition is integral with the guide flap and separates the opposite sides of the guide flap, clearly the partition does not also have a back wall serving as a guide for capsules operated on by an adjacent guide flap.

Also in his rejection, the examiner has never explained from where he obtained a teaching of the shoulders as recited in claims 13-14. Clearly the examiner has read far beyond the actual teachings of Ribani et al, or of Ribani et al combined with Yamamoto et al, to get a single pivot shaft for plural guide flaps. And further, somehow the examiner has also read into this the teaching of the shoulders recited in claims 13-14. There is no teaching in Ribani et al, nor in Yamamoto et al of any shoulders as recited in claims 13-14. Thus the rejection of these claims takes an even further leap beyond the teachings of Ribani et al and/or Yamamoto et al, as there are no such shoulders taught in any of the prior art.

To modify the structure of the Ribani et al reference as set forth by the examiner would require a complete change in the Ribani et al structure. Such a complete change would be so radical in nature that it would clearly not be an obvious modification of Ribani et al.

The examiner is correct that the teachings of the two references must be considered together, and that one reference cannot be attacked by itself. But if one considers the base reference, in this case Ribani et al, and also the secondary reference, Yamamoto et al, and this consideration gives no clue as to how the base reference might be modified to obtain the claimed subject matter, the rejection on these references must fail. And in the instance of the present application, the claims recite structure which neither reference teaches.

Applicants still believe that the examiner is using hindsight when combining the Ribani et al and Yamamoto et al references. To modify the structure of the Ribani et al reference so that it would operate with the multiple receptacles of the Yamamoto et al reference would require a complete change of the Ribani et al structure. This would be such a complete change that there is no way that a person skilled in the art could consider it an obvious change. And there is no teaching in either reference as to how, or why, such modifications should be made.

Applicants still do not agree with the examiner's rejection of claims 22-23, 25, and 27 as being a matter of obvious design choice. In the absence of any cited prior art which teaches a pneumatic cylinder, the examiner is again clearly using hindsight when he says that it would have been obvious to operate the guide flaps by a pneumatic cylinder. It is inappropriate for the examiner simply to say that using a pneumatic cylinder would be obvious when he has cited no prior art which teaches such a cylinder. And the examiner has presented no cogent line of reasoning which supports his assumption.

What the examiner has expressed along this line is that "One of ordinary skill in the art, furthermore, would have expected applicant's invention to perform equally as well with an electric actuator because an electrical actuator as taught by Ribani et al would perform equally well." This is not a statement that applicants' pneumatic actuator is obvious, but rather is a statement that an electrical actuator would have been obvious.

A further essential contribution to the compact design of the presently recited apparatus is the fact that a plurality of guide flaps are arranged in such a way, as specified in the last line of claim 9, in claim 10, and also in claims 29 and 30, that the adjacent back wall of one of the guide flaps also serves to provide capsule guidance for any capsules operated on by the adjacent guide flap. As a result of this recited arrangement, the guide flaps can be disposed in a very compact, space-saving way relative to one another.

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Accordingly, for the reasons as specified above, whether taken singly or in combination, consideration of this response and allowance of the claims are respectfully solicited.

Respectfully submitted,

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